

**REMARKS**

This Application has been carefully reviewed in light of the Office Action dated May 14, 2008. Applicants amend Claims 15, 32-35, 37-43, 63, 80-83, 85-91, 98-105, and 114-116. These amendments are not narrowing. Applicants previously cancelled Claims 8, 24, 36, 48, 56, 72, 84, and 96 without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

**Double Patenting Rejections**

Claims 1-7, 9-19, 20-23, 25-31, 32-35, 37-43, 44-47, 49-55, 57-67, 68-71, 73-79, 80-83, 85-91, 92-95, 97-117, and 118-123 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-36 of copending application No. 10/895,668 (Our Docket No. 069547.0215). Applicants traverse this rejection but would consider filing a terminal disclaimer or making appropriate amendments upon an indication of allowable subject matter and prior issuance of the application that forms the basis of the rejection.

**35 U.S.C. § 101 Rejections**

The Office Action rejects Claims 32-35, 37-43, 80-83, and 85-91 under 35 U.S.C. § 101 by asserting that these claims are directed to non-statutory subject matter. (Office Action, p. 5). Applicants respectfully traverse this rejection. Without admitting to the assertion of the Office Action, Applicants respectfully submit that these claims, as amended, satisfy the requirements of 35 U.S.C. § 101. Accordingly, Applicants respectfully request reconsideration and allowance of amended Claims 32-35, 37-43, 80-83, and 85-91.

**35 U.S.C. § 112 Rejections**

The Office Action rejects Claims 98-116 under 35 U.S.C. § 112, second paragraph. In particular, the Office Action asserts that these claims are indefinite for allegedly failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. Without admitting to the assertion of the Office Action, Applicants respectfully submit that these claims, as amended, satisfy the requirements of 35 U.S.C. § 112, second

paragraph. Accordingly, Applicants respectfully request reconsideration and allowance of amended Claims 98-116.

### **35 U.S.C. § 103 Rejections**

#### I. Claims 1-7, 9-23, 32-35, 37-47, 49-55, 57-71, 80-83, 85-95, and 120-123

The Office Action compares Claim 1 to the combination of U.S. Patent No. 7,246,093 issued to Katz (“*Katz*”) and U.S. Patent Publication No. 2002/0052827 by Waelbroeck et al (“*Waelbroeck*”). (Office Action, pp. 6-7). Applicants respectfully traverse any rejection.

The *Katz-Waelbroeck* combination fails to teach, suggest, or disclose “as a result of the first offer price being lower than the first bid price, automatically decreasing the first bid price to match the first offer price” as recited in Claim 1. The Office Action compares the recited element of Claim 1 to column 5, lines 47-60 of *Katz*. (Office Action, p. 6). The Office Action, however, is incorrect. The portion of *Katz* cited by the Office Action discloses only that *Katz*’s exchange takes some action based on a comparison of order size:

[The exchange] [p]rovide[s] a process whereby the size of a market maker's quotation may be automatically increased when its [sic] has a quotation at the best price and the aggregate size of the best price would fall below a minimum size, or else automatically lower the price of the quotation in the case of a bid and raise the price of the quotation in the case of an offer according to parameters established by the market maker.

(*Katz*; col. 5, ll. 54-60)(emphasis added). Thus, the cited portion of *Katz* only discloses taking some action based on a comparison of order size. This portion of *Katz* is irrelevant to the claim language, which recites an action based on a comparison of “price.” Therefore, *Katz* fails to teach, suggest, or disclose “as a result of the first offer price being lower than the first bid price, automatically decreasing the first bid price to match the first offer price” as recited in Claim 1.

The Office Action does not suggest that *Waelbroeck* remedies this deficiency of *Katz*. Therefore, the proposed *Katz-Waelbroeck* combination fails to support the rejection of Claim 1. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claim 1 and its dependents.

In rejecting Claims 20, 32, 44, 49, 68, 80, 92, 120, 121, 122, and 123, the Office Action employs the same rationale used to reject Claim 1. Accordingly, for reasons

analogous to those stated above with respect to Claim 1, Claims 20, 32, 44, 49, 68, 80, 92, 120, 121, 122, and 123 and their respective dependents are allowable.

## II. Claims 25-31 and 73-79

The Office Action states: “Claim 25 is rejected on the same grounds as Claim 1.” (Office Action, p. 15). Claim 25, however, recites language that does not appear in Claim 1. In particular, Claim 25 recites “as a result of the first offer price matching the first bid price.” Because the Office Action does not address this claim language, no rejection of Claim 25 exists. Claim 25 and its dependents are therefore allowable.

In rejecting Claim 73, the Office Action employs the same rationale that is used to reject Claim 25. Accordingly, for reasons analogous to those stated above with respect to Claim 25, Claim 73 and its dependents are allowable.

## III. Claims 97-117

*Katz* and *Waelbroeck*, both alone and in combination, fail to disclose, teach, or suggest every element of Claim 97. For example, the proposed *Katz-Waelbroeck* combination fails to disclose, teach, or suggest “automatically changing at least one of the first bid price and the first offer price as a result of the comparison of the first bid price to the first offer price” as recited by Claim 97. The Office Action fails to address this element of Claim 97. Furthermore, the portion of *Katz* cited by the Office Action in addressing Claim 1 discloses only that the described exchange “provide[s] a process whereby the size of a market maker's quotation may be automatically increased when its [sic] has a quotation at the best price and the aggregate size of the best price would fall below a minimum size, or else automatically lower the price of the quotation in the case of a bid and raise the price of the quotation in the case of an offer according to parameters established by the market maker.” (*Katz*; col. 5, ll. 54-60)(emphasis added). The cited portion of *Katz*, however, does not teach, suggest, or disclose “automatically changing at least one of the first bid price and the first offer price as a result of the comparison of the first bid price to the first offer price” as recited by Claim 97. (Emphasis added).

Combining *Katz* with *Waelbroeck* fails to remedy this deficiency. Therefore, the proposed *Katz-Waelbroeck* combination fails to support the rejection of Claim 97. For at least the foregoing reasons, Claim 97 and its dependents are allowable.

IV. Claims 49-79, 92-95, 117, and 120-123

The Office Action rejects Claims 49, 68, 73, 92, 117, and 120-123 over *Katz* in view of *Waelbroeck*. As noted above, the proposed *Katz-Waelbroeck* combination fails to disclose, teach, or suggest every element of any of Claims 49, 68, 73, 92, 117, and 120-123. Moreover, the proposed additional combination with *Friesen* fails to remedy these omissions as the cited portion of *Friesen* also fails to teach, suggest, or disclose the elements of Claims 49, 68, 73, 92, 117, and 120-123, respectively, that are identified above as missing from the proposed *Katz-Waelbroeck* combination. Therefore, the proposed *Katz-Waelbroeck-Friesen* combination fails to support the rejection of Claims 49, 68, 73, 92, 117, and 120-123. For at least these reasons, Claims 49, 68, 73, 92, 117, and 120-123 and their respective dependents are allowable.

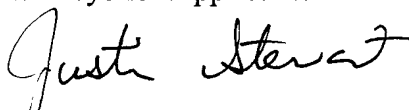
**Conclusions**

For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants requests such a conference at the convenience of the Examiner.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees or to credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicants



Justin N. Stewart  
Reg. No. 56,449

2001 Ross Avenue, Suite 600  
Dallas, Texas 75201-2980  
(214) 953-6452

Date: August 14, 2008

**CORRESPONDENCE ADDRESS:**

Customer Number:

**05073**